

CHAPTERS 47 to 49  
Reserved

*SECURITIES*

CHAPTER 50  
REGULATION OF SECURITIES OFFERINGS AND  
THOSE WHO ENGAGE IN THE SECURITIES BUSINESS

[Appeared as Ch 17, 1973 IDR]  
[Prior to 10/22/86, Insurance Department[510]]

**191—50.1(502) Broker-dealer applications, updates, and renewals.**

**50.1(1) *Broker-dealer applications.*** Every applicant for an original license to conduct business as a broker-dealer shall file with the administrator:

*a.* A complete, current Form BD, manually signed and notarized, only if the applicant is not a member of the National Association of Securities Dealers (NASD).

*b.* The most recent audited financial statement, unless waived by the administrator for good cause. The financial statement shall include a balance sheet, income statement and net capital calculation. The audit shall be performed by an independent certified public accountant according to generally accepted accounting principles. If a waiver is granted, the applicant shall file a financial statement, attested to by the president or financial officer of the broker-dealer, as to its completeness and accuracy.

*c.* A filing fee of \$200. If the applicant is a member of the National Association of Securities Dealers (NASD), the fee shall be filed with the Central Registration Depository (CRD). If the applicant is not a member of the NASD, the filing fee shall be filed with the administrator.

*d.* A form known as the Iowa Broker-Dealer Affidavit which may be obtained from the administrator, at the Iowa Securities Bureau, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319. The form requires a manually signed and notarized statement:

(1) That the applicant engaged in no securities transactions with persons in Iowa prior to licensing or identifying past and current Iowa accounts; and

(2) A consent to appointment of the administrator as the applicant's attorney to receive service of any lawful process in a noncriminal proceeding against the applicant, a successor, or personal representative, which grows out of conduct prohibited or made actionable by Iowa Code chapter 502 or any rule or order of the administrator, with the same force and validity as if served personally.

**50.1(2) *Broker-dealer renewals.*** Every applicant for renewal of a broker-dealer's license shall submit all of the following by November 30 each year:

*a.* The applicant's most recent audited financial statements, if not previously submitted to the administrator pursuant to rule 50.6(502).

*b.* A filing fee of \$200. If the applicant is a member of the National Association of Securities Dealers (NASD), the fee shall be filed with the Central Registration Depository (CRD). If the applicant is not a member of the NASD, the applicant shall file the renewal fee with the administrator. Failure to pay the renewal fee shall be deemed a request for withdrawal of the broker-dealer license and the broker-dealer shall be automatically terminated for failure to renew.

*c.* If the applicant is not a member of the NASD, an update to the Form BD with the administrator.

**50.1(3) *Updated filings.***

*a.* If the information contained in an application for original license or renewal becomes inaccurate or incomplete in any material respect, including a change in the name or form of organization of the applicant, a correcting amendment shall be filed within 30 days of the change. Failure to file within 30 days may result in sanctions as authorized by Iowa Code section 502.304.

(1) Members of the National Association of Securities Dealers shall file:

1. In the case of a structural change, i.e., state of incorporation or partnership to corporation, an Iowa Broker-Dealer Affidavit with the administrator. Broker-dealer license fee and fees for all Iowa-licensed agents shall be paid directly to the administrator.

2. In the case of a name change, a new Iowa Broker-Dealer Affidavit with the administrator. No fees are required.

3. Any amendment to Form BD with the Central Registration Depository.

4. Withdrawal requests (Form BDW) with the Central Registration Depository.

(2) Nonmembers of the National Association of Securities Dealers shall file:

1. In the case of a structural change, a new application as set forth in 50.1(1) including the licensing fees for the broker-dealer and all Iowa-licensed agents, with the administrator.

2. In the case of a name change, all amendments to Form BD (specifically including a manually signed page one), an Iowa Broker-Dealer Affidavit, with the administrator.

3. Amendments to Form BD with the administrator.

4. Withdrawal requests with the administrator.

b. Audited financial statements shall be filed within 60 days of the broker-dealer's fiscal year end. The audit shall be performed by an independent certified public accountant according to generally accepted accounting principles. The financial statement shall include a balance sheet, income statement and net capital calculation. Failure to file these statements within 60 days may result in sanctions authorized by Iowa Code section 502.304.

Upon verbal or written request, the most recent unaudited financial statement shall be provided within two business days of the request. Telefaxing or express mail shall be required if necessary to meet the two-business-day limit.

**191—50.2(502) Principals.** Every broker-dealer registered pursuant to the Iowa Uniform Securities Act (the Act) shall have at least two officers or partners registered as principals, appropriate to the function(s) to be performed, with the National Association of Securities Dealers. The broker-dealer may seek a waiver of this requirement for good cause upon written request to the administrator.

This rule is intended to implement Iowa Code section 502.302.

**191—50.3(502) Record-keeping requirements of broker-dealers.**

**50.3(1)** Unless otherwise provided by order of the Securities and Exchange Commission, each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall make, maintain and preserve books and records in compliance with Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4 (1996)), 15c2-6 (17 CFR 240.15c2-6 (1996)) and 15c2-11 (17 CFR 240.15c2-11 (1996)), Securities Exchange Act of 1934.

**50.3(2)** To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the administrator for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

**191—50.4(502) Minimum financial requirements and financial reporting requirements of broker-dealers.**

**50.4(1)** Each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall comply with Securities and Exchange Commission rule 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c-3(1996)), Securities Exchange Act of 1934.

**50.4(2)** Each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall comply with Securities and Exchange Commission rule 17a-11 (17 CFR 240.17a-11 (1996)) and shall file with the administrator copies of annual audited financial statements and notices of financial deficiencies, as required under rules 17a-5(d) (17 CFR 240.17a-5(d) (1996)) and 17a-11 (17 CFR 240.17a-11(1996)), Securities Exchange Act of 1934.

**50.4(3)** To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the administrator for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

**191—50.5(502) Net capital.** Rescinded IAB 8/13/97, effective 9/17/97.

**191—50.6(502) Filing of financial reports.** Rescinded IAB 8/13/97, effective 9/17/97.

**191—50.7(502) Cost of examination.**

**50.7(1)** Whenever the administrator or the administrator's agent makes an examination as provided for in section 303(4) of the Act, the broker-dealer shall pay to the administrator the salaries and the travel, lodging and meal expenses pertaining to such examination as are permitted by the rules of the comptroller's office for state employees.

**50.7(2)** Within a reasonable time after completion of the examination, the administrator shall notify the subject of the examination of the expenses attributable thereto.

**50.7(3)** The expenses collected by the administrator pursuant to this rule shall be turned into the state treasury.

**191—50.8(502) Registration of agents and issuers.****50.8(1) NASD member.**

*a.* An applicant for registration as an Iowa-licensed agent of an NASD member broker-dealer shall:

(1) Pass one of the following National Association of Securities Dealers (NASD) examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62; and

(2) Pass the NASD Series 63 or Series 66 examination; and

(3) File an accurate and complete Form U-4 with the Central Registration Depository (CRD) and pay the required filing fee of \$30 to the NASD.

*b.* An applicant may file a written request for waiver for good cause of the examination requirement contained in 50.8(1)"a." A waiver will be considered for an applicant with ten years of continuous experience in the securities industry. A waiver of the Series 63 examination will not be granted.

c. An applicant for an agent license under this subrule who has not been continuously licensed with the NASD for the two-year period immediately preceding the filing of the application shall be subject to the examination requirements of this rule.

d. Updates to Form U-4, withdrawal requests, renewals and renewal fees shall be filed with the Central Registration Depository (CRD).

**50.8(2) *Non-NASD member.***

a. An applicant for registration as an Iowa-licensed agent of an issuer or other non-NASD member must file with the administrator:

(1) Proof of attaining a passing grade on one of the following NASD examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62; and

(2) Proof of attaining a passing grade on the NASD Series 63 or Series 66 examination; and

(3) An accurate and complete Form U-4 and \$30 filing fee.

b. An applicant may file a written request for waiver of the examination requirements. The examination requirements may be waived upon written application to the administrator for good cause shown.

c. Updates to Form U-4, withdrawal requests and renewal documents and fees shall be filed directly with the administrator.

**50.8(3) *Incomplete applications.*** No application for a license to act as an agent shall be considered for approval until it is complete.

a. No application for an agent license with an NASD member broker-dealer shall be considered complete until all requirements of 50.8(1)“a” are satisfied.

b. No application for an agent license with an issuer or other non-NASD member shall be considered complete until all requirements of 50.8(2)“a” are satisfied.

c. In the discretion of the administrator, an applicant may be required to provide additional information regarding any aspect of the application. The application shall be incomplete until such requests are satisfied.

**50.8(4) *Employment of agents of an issuer.*** An issuer who desires to employ persons as agents of issuers within the meaning of section 502.102(3) of the Act must apply to the administrator for such authority. The application shall be made by letter and shall include:

a. A statement of the issuer’s intent to employ agents for the sale of its securities,

b. Name, address, social security number and proof of satisfaction of 50.8(2)“a” for each agent, and

c. A complete description of the subject securities.

This rule is intended to implement Iowa Code section 502.302.

**191—50.9(502) Dishonest or unethical practices in the securities business.**

**50.9(1)** These acts and practices, including but not limited to the following, are deemed dishonest or unethical practices in the securities business by any person, other than an agent, under Iowa Code section 502.304(1)“g.”

a. Engaging in any unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

b. Inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account;

c. Recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

d. Executing a transaction on behalf of a customer without authorization to do so;

e. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

f. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement prior to the initial transaction in the account;

g. Failing to segregate customers' free securities or securities held in safekeeping;

h. Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;

i. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

j. Failing to furnish to a customer purchasing securities in an offering registered pursuant to Iowa Code section 502.206 or 502.207, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus; if the offering is not registered pursuant to section 502.206 or 502.207, the broker/dealer shall furnish disclosure documents customarily available;

k. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

l. Offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell;

m. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom it is acting or with whom it is associated in the distribution, or any person controlled by, controlling or under common control with such broker-dealer;

n. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(1) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(2) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subrule shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

(3) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

*o.* Guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

*p.* Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, such security;

*q.* Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of this practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

*r.* Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of the control to the customer, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

*s.* Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

*t.* Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

*u.* Failing or refusing to provide, within 14 days or later time as prescribed by the securities bureau, information requested in writing by the bureau pursuant to its investigative authority;

*v.* Extending credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;

*w.* Engaging in acts or practices enumerated in rule 191—50.43(502);

*x.* Failing to promptly provide the most current prospectus, the most recently filed periodic report filed under Section 13 of the Securities Exchange Act or other research reports when requested to do so by a customer in the solicitation of a sale or purchase of an OTC non-NASDAQ security;

*y.* Marking any order tickets or confirmations as unsolicited when in fact the transaction is solicited;

*z.* Failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than every three months; provided that, this subrule shall apply only if the firm has been a market maker in the security at any time during the period for which the monthly or quarterly statement is issued;

*aa.* Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

**50.9(2)** These acts and practices, including but not limited to the following, are deemed dishonest or unethical practices in the securities business by an agent, under Iowa Code section 502.304(1) “g.”

*a.* Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer unless the customer is a member of the agent’s family and the act or practice is approved in advance by supervisory personnel;

*b.* Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

*c.* Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

*d.* Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

*e.* Dividing or otherwise splitting the agent’s commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

*f.* Engaging in conduct specified in subrule 50.9(1), paragraph “b,” “c,” “d,” “e,” “f,” “i,” “j,” “n,” “o,” “p,” “q,” “u,” “w,” “x,” “y,” “z” or “aa”.

**191—50.10(502) Unsolicited order exemption.**

**50.10(1)** Any registered broker-dealer effecting a transaction pursuant to an unsolicited order or offer to buy, and claiming an exemption from registration based solely upon the availability of subsection 3 of section 203 of the Act, shall require the customer to acknowledge that in fact the transaction is unsolicited.

**50.10(2)** The acknowledgment required by this rule shall be obtained by the broker-dealer on or before the settlement date for the transaction.

**50.10(3)** For the purposes of this rule the acknowledgment shall take the following form:

*a.* The confirmation required to be given pursuant to 50.10(1) shall have stamped on it, or otherwise boldly displayed, the words “Unsolicited Order, Notify Immediately if Otherwise”; or

*b.* A signed statement from the customer which indicates that the order was unsolicited and contains the name of the customer, the name of the securities involved, the number of securities involved, the price at which the securities were purchased, the date of transaction and the total dollar amount of the transaction including commissions paid.

**50.10(4)** For the purposes of this rule the customer will be presumed to have acknowledged that the transaction was unsolicited if the customer does not indicate otherwise on or before the settlement date.

**50.10(5)** A broker-dealer shall notify the administrator, in writing, that it is executing unsolicited orders in a security whenever the following conditions are met:

*a.* More than six unsolicited orders or offers to buy such security are received during any three consecutive business days;

*b.* The only exemption from registration being relied upon for the transaction is that provided by subsection 3 of section 203 of the Act.

**191—50.11(252J) Denial, suspension or revocation of license for failure to pay child support.**

**50.11(1)** Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the administrator shall issue a notice to the agent that the agent’s pending application for licensure or current license will be denied, suspended or revoked 30 days after the date of the notice. Notice shall be sent to the agent’s last-known address by certified mail.

**50.11(2)** The notice shall contain the following items:

- a.* A statement that the administrator intends to deny, suspend or revoke the agent's securities license in 30 days;
- b.* A statement that the agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;
- c.* A statement that the agent's application, request for licensure or current license will be denied, suspended or revoked if the certificate of noncompliance is not withdrawn;
- d.* A statement that the agent does not have a right to a hearing before the division, but the agent may file an application for a hearing in district court pursuant to Iowa Code Supplement section 252J.9 within 30 days of the provision of the notice;
- e.* A statement that the filing of an application with the district court will stay the proceedings of the division;
- f.* A copy of the certificate of noncompliance.

**50.11(3)** The filing of an application for hearing with the district court will stay all proceedings until the administrator is notified of the resolution of the application.

**50.11(4)** If the administrator does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for hearing has been filed, the administrator shall deny, suspend or revoke the agent's license 30 days after the notice is issued.

**50.11(5)** Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, pending proceedings shall halt and the named agent shall be notified that the proceedings have been halted. If the agent's license has already been suspended or revoked, the agent shall reapply for licensure and the application shall be granted if the agent is otherwise in compliance with the division's rules.

**50.11(6)** All application fees must be paid by the applicant before a license will be issued after the administrator has denied, suspended or revoked a license pursuant to Iowa Code chapter 252J.

This rule is intended to implement Iowa Code section 252J.8.

#### **191—50.12(502) Rules of conduct.**

**50.12(1)** Each broker-dealer, after execution of and before completion of each transaction with its customer, shall give or send to the customer a written confirmation setting forth:

- a.* A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;
- b.* Whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent both for the customer and some other person;
- c.* When the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold or the fact that such information will be furnished upon the request of the customer.

**50.12(2)** Each broker-dealer shall establish written supervisory procedures and a system for applying such procedures which may reasonably be expected to prevent and detect any violations of Iowa Code chapter 502 and the rules and orders thereunder. Such procedures shall include the designation and qualification of a number of supervisory employees reasonable in relation to the number of its licensed agents, offices, and transactions in this state.

**50.12(3)** Every broker-dealer whose principal office is located in this state shall have at least one partner, officer or licensed agent employed on a full-time basis at its principal office.



**191—50.13(502) Offers on the Internet.** Offers of securities made by, or on behalf of, issuers on or through the Internet shall be exempt from Iowa Code sections 502.201 and 502.602 if the following conditions are observed:

1. The Internet offer indicates, directly or indirectly, that the securities are not being offered to residents of Iowa;
2. The Internet offer is not specifically directed to any person in Iowa by, or on behalf of, the issuer of the securities; and
3. No sales of the issuer's securities are made in Iowa as a result of the Internet offering until such time as the securities being offered have been registered under Iowa Code sections 502.201 and 502.602, and a final prospectus or Form U-7 is delivered to Iowa investors prior to such sales.

**191—50.14(502) Notice filing procedures for rule 506 offerings.**

**50.14(1)** An issuer offering a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on SEC Form D, a consent to service of process on a form prescribed by rule 50.24(502), and pay a fee of \$100 no later than 15 days after the first sale of such federal covered security in this state.

**50.14(2)** For purposes of this rule, the Securities and Exchange Commission "Form D" is defined as the document, as adopted by the Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the Securities and Exchange Commission from time to time, entitled "FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

**191—50.15(502) Investment contract defined.** "Investment contract" as used in Iowa Code section 502.102(14) includes:

1. Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. In this rule, a "common enterprise" means an enterprise in which the fortunes of the investor are tied to the efficacy of the efforts and successes of those seeking the investment or of a third party; and
2. Any investment by which an offeree furnishes initial value to an offerer, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

**191—50.16(502) Uniform limited offering exemption.**

**50.16(1) Preliminary notes.**

*a.* This rule is the North American Securities Administrators Association Uniform Limited Offering Exemption as adopted in September 1983, with amendments adopted through April 29, 1989, without any of the footnotes and may be cited as the "Uniform Limited Offering Exemption."

*b.* Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities law.

c. In view of the objective of this rule and the purposes and policies underlying this Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

d. Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or "know your customer" standards, or any other requirements of law otherwise applicable to such registered persons.

**50.16(2) Exemption.** By authority delegated to the administrator to promulgate rules in Iowa Code sections 502.607(1) and 502.203(16), the following transaction is determined to be exempt from the registration provisions of the Iowa Uniform Securities Act:

a. Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rule 230.505, including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended by Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, and which satisfies the following further conditions and limitations:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless the person is registered under Iowa Code section 502.302 or exempt from registration as a broker-dealer by Iowa Code section 502.301(1) "b."

(2) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately registered in this state.

b. No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.252, Section (c), (d), (e), or (f):

(1) Has filed a registration statement which is subject to a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

(2) Has been convicted, within five years prior to the filing of the notice required under this exemption, of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to filing of the notice required under this exemption;

(4) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining the party from engaging in or continuing any conduct of practice in connection with the purchase or sale of any security, or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.

(6) The disqualification of a person pursuant to 50.16(2), paragraph “b,” may be waived by the Iowa securities administrator if the order, conviction, judgment or decree relating to the person’s disqualification has been disclosed in writing to the Iowa securities administrator and the Iowa securities administrator has determined, upon a showing of good cause, that the public interest no longer requires the person to be disqualified.

(7) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this subrule existed.

c. The issuer shall file with the state administrator a notice on Form D (17 CFR 239.500):

(1) Not later than 15 days following the date of the first sale in this state. This notice shall be accompanied by one copy of any written information furnished to investors, a consent to service of process on Form U-2 and a filing fee of \$100.

(2) Filing occurs on the earlier of the date received by the administrator or the date the documents are mailed with the United States postal service by registered or certified mail addressed to the administrator’s office in Des Moines, Iowa.

d. In all sales to nonaccredited investors in this state, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(1) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser’s other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor’s net worth, it is suitable;

(2) The purchaser, either alone or with a purchaser’s representative, has such knowledge and experience in financial and business matters that the purchaser is or they are capable of evaluating the merits and risks of the prospective investment.

**50.16(3)** A failure to comply with a term, condition or requirement of 50.16(2) “a”(1), 50.16(2) “c” or 50.16(2) “d” will not result in loss of the exemption from the requirements of Iowa Code section 502.201 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

b. The failure to comply was insignificant with respect to the offering as a whole; and

c. A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of 50.16(2) “a”(1), 50.16(2) “c” and 50.16(2) “d.”

**50.16(4)** Where an exemption is established only through reliance on 50.16(3), the failure to comply shall nonetheless be actionable under Iowa Code section 502.604.

**50.16(5)** Integration. Transactions which are exempt under this rule may not be combined with offers and sales exempt under any other rule or provision of Iowa Code chapter 502, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

**50.16(6)** Orders. The administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

**191—50.17(502) Commissions on limited offerings.** In addition to those commissions or remuneration which may be permitted by order, the administrator hereby grants permission for the payment of commission under section 203(9) of the Act when the following conditions have been complied with:

1. Commissions given on account of the sale of the securities are paid only to broker-dealers registered with the administrator pursuant to the Act;
2. Commissions and all other expenses of the offering do not exceed 20 percent of the aggregate sales price of the securities proposed to be sold;
3. An offering document is made available to all offerees and purchasers at the time the first written offer is made, the confirmation of the sale, payment is made pursuant to the sale, or delivery of the security pursuant to the sale, whichever first occurs;
4. The offering document proposed to be used is supplied to the administrator at least 15 days prior to its being given to the first offeree.

**191—50.18(502) Withdrawal of exemptions.** The administrator will view the following as reasons for entering an order withdrawing the exemption provided by section 203(9) of the Act:

1. A public advertisement is used to promote the sale of securities for which such exemption is claimed;
2. The offering is considered to be part of a registered offering under the Securities Act of 1933.

**191—50.19(502)\* Annual report to shareholders.** So long as a registration statement is effective, within 120 days following the close of each fiscal year the registrant shall distribute an annual report to all holders of securities which were purchased pursuant to the registration. Said annual report shall contain a comparative balance sheet, income statement and statement of changes in financial position, all of which must be audited by an independent certified public accountant with an opinion expressed thereon. Upon application to the administrator with good cause shown the audit by an independent certified public accountant and opinion pertaining thereto may be waived.

\*Objection, see filed rules published in 1/26/76, 3/8/76 IAC Supplement.

**191—50.20(502) Annual reports filed with the administrator.** So long as a registration statement is effective the issuer shall file with the administrator an annual report within 120 days following the close of the issuer's fiscal year. At a minimum the annual report shall contain the following:

**50.20(1)** Financial statements including a comparative balance sheet as of the end of its fiscal year, income statement, statement of changes in financial position, and statement of owner's equity. All of the foregoing must be audited by an independent certified public accountant with an opinion expressed thereon except when waiver of the same has been granted by the administrator upon application with good cause shown;

**50.20(2)** Any issuer filing reports under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 must file, in lieu of the report required by 50.20(1), a duplicate copy of the annual report filed with the Securities and Exchange Commission.

**191—50.21(502) Continuing education requirements.** Failure to comply with any of the applicable continuing education requirements adopted by the NASD, NYSE or other self-regulatory agency will result in a determination by the administrator that the agent is not qualified under Iowa Code section 502.304(1) "i."

**191—50.22(502) Registration for small corporate offerings.**

**50.22(1)** Form U-7 (which may be obtained by contacting the Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319) has been developed pursuant to the Small Business Investment Incentive Act of 1980 which prescribes state and federal cooperation in furtherance of the policies of the Act to diminish the burden of raising investment capital and minimize interference with the business of capital formation.

**50.22(2)** To be eligible to use Form U-7, a company must comply with each of the following requirements:

*a.* The company must be a corporation organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration, production or mining or other extractive industries. “Blind pool” offerings and other offerings for which the specific business or properties cannot now be described are ineligible to use Form U-7;

*b.* The securities may be offered and sold only on behalf of the company, and Form U-7 may not be used by any selling security holder (including purchasing underwriters in a firm commitment underwriting) to register the securities for resale;

*c.* The offering price for common stock (and the exercise price, if the securities are options, warrants or rights for, and the conversion price if the securities are convertible into common stock) must be equal to or greater than \$5 per share. By execution of the application and filing of the Form U-7 in any state, the company thereby agrees with the administrator that the company will not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration; provided, however, that in connection with a subsequent registered public offering, the company may upon application and consent of the administrator take such action;

*d.* The company may engage selling agents to sell the securities; but, commissions, fees, or other remuneration for soliciting any prospective purchaser in this state in connection with this offering may only be paid to persons who, if required to be registered, the company believes and has reason to believe, are appropriately registered in this state;

*e.* Form U-7 shall not be available for the securities of any company if it or any of its officers, directors, 10 percent stockholders, promoters, or any selling agents of the securities to be offered, or any officer, director or partner of the selling agent:

(1) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state’s securities law within five years prior to the filing of the application for registration hereunder;

(2) Has been convicted within five years prior to the filing of the application for registration hereunder of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state administrative enforcement order or judgment entered by that state’s securities administrator within five years prior to the filing of the application for registration hereunder or is subject to any state’s administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the application for registration hereunder;

(4) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with this offer, purchase or sale of securities;

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or permanently restricting or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security involving the making of any false filing with the state entered within five years prior to the filing of the application for registration hereunder;

f. The disqualification of a person pursuant to 50.22(2), paragraph "e," may be waived by the Iowa securities administrator if the order, conviction, judgment, or decree relating to the person's disqualification has been disclosed on the Form U-4, the Form U-4 has been filed as an exhibit to the Form U-7, and the Iowa securities administrator determines, upon a showing of good cause, that the public interest no longer requires the person to be disqualified.

**50.22(3)** Use of the Form U-7 is available to any offering of securities by a company, the aggregate offering price of which, within or outside this state, shall not exceed \$1 million, less the aggregate offering price for all securities sold within the 12 months before the start of, and during the offering of, the securities under SEC Rule 504 in reliance on any exemption under Section 3(b) of the Securities Act of 1933 or in violation of Section 5(a) of that Act. The Form U-7 is not available to a company that is an investment company (including mutual funds) or is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934.

#### **191—50.23(502) Form of financial statements.**

**50.23(1)** Except as provided otherwise by this rule, the balance sheets, analysis of surplus, and statement of profit and loss required by paragraph (p) of paragraph (2) of section 207 of the Act shall be certified to by an independent accountant or certified public accountant. Upon application to the administrator with good cause shown the audit by an independent accountant or certified public accountant and opinion pertaining thereto may be waived.

**50.23(2)** The balance sheet, analysis of surplus, and statement of profit and loss used merely for the purpose of complying with the four-month requirement of paragraph (p) of paragraph (2) of section 207 of the Act need not have the certification required by 50.23(1) if such certification has been submitted for the last fiscal year prior to the application and the date to which the statements subject to the certification is not more than 12 months previous to the registration date.

#### **191—50.24(502) Consent to service.**

**50.24(1)** Every consent appointing the administrator or successor to be an attorney to receive service of any lawful process which is required by section 609 of the Act shall be on the form available from the administrator, shall be properly notarized, and shall contain at least the following information:

- a. Name of the applicant;
- b. Address of the applicant;
- c. A statement as to whether the applicant is an issuer or broker-dealer;
- d. A statement that the consent is irrevocable;
- e. A statement that the consent is valid as to any noncriminal suit, action or proceeding against the applicant or the successor, executor or administrator of the applicant which arises out of the Act; and
- f. A statement that the applicant stipulates and agrees that service upon the administrator shall have the same validity as if served personally upon the applicant.

**50.24(2)** The Form U-2 and any other form containing the information specified in 50.24(1) may be submitted in lieu of the form prescribed by the administrator.

**50.24(3)** Incorporation by reference consents to service of process previously filed. For purposes of consents to service of process required to be filed pursuant to 1997 Iowa Acts, House File 553, sections 7(1) "a" and 7(2), and Iowa Code sections 502.302(1) and 502.609, or the rules or regulations promulgated pursuant to any of the foregoing, a broker-dealer, agent, or issuer may incorporate by reference any consent to service of process previously filed with the administrator by such person or entity.

**191—50.25(502) Advertising.** For purposes of this rule, the term "advertisement" means any written or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or similar communications media, including film strips or motion pictures, published in connection with the offer or sale of a security.

**50.25(1)** The following advertising used in connection with the offer, sale or purchase of any security in this state is exempted from filing under section 602 of the Act:

*a.* A prospectus published or circulated in connection with an offering of security for which a registration statement has been filed under section 206 or 207 of the Act that has not become effective; or an offering of a security for which a notice or application for exemption, including such prospectus, has been filed under section 202 or 203 of the Act;

*b.* Advertising which does no more than state from whom a prospectus may be obtained, identify the security offered for sale and state the price thereof and the names of broker-dealers having an interest in the sale thereof;

*c.* Advertising published by a licensed broker-dealer or investment adviser concerning the qualifications or business of the licensee, the general advisability of investing in securities or market quotations or other factual information relating to particular securities or issuers, provided such advertising contains no recommendation concerning the purchase or sale of particular securities; and

*d.* Any other advertising which the administrator may specify by order.

**50.25(2)** All advertising required to be filed by a licensee or registrant shall be filed with the administrator not later than the date of use. All advertising required to be filed by any other person shall be filed in duplicate not less than ten days prior to the date of use or such shorter period as the administrator may permit, and shall not be used in this state until a copy thereof, marked with allowance for use, has been received from the administrator.

**50.25(3)** Every filing with the administrator of sales literature of an investment company registered under the Investment Company Act of 1940 shall indicate the date of its filing with the National Association of Securities Dealers, Inc. or the Securities and Exchange Commission and the action taken thereon. Any such literature which is materially misleading within the meaning of the statement of policy of the Securities and Exchange Commission, as amended November 5, 1957, is deemed "false or misleading advertising" within the meaning of section 407 of the Act.

**50.25(4)** Specific prohibitions. The following advertisements are deemed false or misleading practices:

*a.* Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress, or success and that of another company, business, industry, or investment media.

*b.* Layout or format which omits information necessary to make the entire advertisement a fair and truthful representation.

c. Statements or representations without accreditation which predict future profit, success, appreciation, performance, or otherwise relate to the merit or potential of the securities.

d. Generalizations, generalized conclusions, opinions, representations, and general statements based on a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation.

e. Sales kits or film clips, displays, or exposures, which alone or by sequence and progressive compilation, tend to present a misleading impression of guaranteed or exaggerated potential, profit, safety, or return.

f. Distribution of any nonfactual or inaccurate data or material by words, pictures, charts, graphs, or otherwise based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions, or excessive optimism.

g. Any package or bonus deal, prize, gimmick, or similar inducement in connection with the offer or sale of a security combined with or dependent upon the sale of some other product, contract, or service, unless the combination has been fully disclosed and specifically described and identified in the advertisement.

**50.25(5)** If a sales agent is offering securities, it is the responsibility of the firm employing the agent to ensure that the name of the broker-dealer is displayed on the agent's business cards as prominently as the individual's name. The inclusion of other agency or firm names on the cards is discouraged to avoid ambiguity. Any business card or other advertisement containing the name of an agent, as defined in Iowa Code section 502.102(3), shall be further subject to the following:

a. The agent shall be clearly designated as a securities agent or registered representative of the broker-dealer, and the broker-dealer shall be clearly designated as a broker-dealer.

b. No advertising other than agent name, office address, broker-dealer name, and broker-dealer logo or trademark shall appear on the business cards. The inclusion of the name, logo and trademark of other entities shall be limited as set forth in paragraph 50.25(5)"d" below.

c. The office address and telephone number of the location where the agent conducts securities business shall appear on the card or advertisement.

d. If the name, logo or trademark of any business entity, other than that of the broker-dealer, appears on a business card or in an advertisement, the business of that entity and the relationship of the agent to that entity shall be clearly stated.

#### **191—50.26(502) Trust indenture requirements.**

**50.26(1)** Evidences of debt registered by coordination under section 206 of the Act shall be issued under a trust indenture meeting the requirements of the Trust Indenture Act of 1939 or, if exempt thereunder, meeting the requirements of 50.26(2) and 50.26(3).

**50.26(2)** Unless otherwise permitted by the administrator, evidences of debt registered by qualification under section 207 of the Act shall be issued under a trust indenture which at a minimum shall provide that:

a. There shall at all times be one or more trustees thereunder, at least one of which shall be a corporation organized and doing business under the laws of the United States or of any state which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority; provided that where it appears that the requirements of a corporate trustee may not be necessary for the protection of investors the administrator may, upon such conditions as the administrator deems appropriate, waive such requirement and permit the trustee to be an individual or other person;



b. If the indenture requires or permits the appointment of one or more cotrustees in addition to the corporate trustee, then the rights, powers, duties and obligations conferred or imposed upon and exercised or performed by such corporate trustee or such corporate trustee and such cotrustee jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed such corporate trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such cotrustees;

c. In the case of certificates of interest or participation the trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of a security or securities in which such certificates evidence an interest or participation; and

d. If any trustee has or shall acquire any conflicting interest such trustee shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture. As used in this rule, a "conflicting interest" shall exist in all situations where an indenture trustee would be deemed to have a conflicting interest under Section 310(b)(1) of the Trust Indenture Act of 1939 as amended.

**50.26(3)** When the administrator deems appropriate for the protection of purchasers, any or all of the provisions of the Trust Indenture Act of 1939, as amended, may be required by the administrator to be included as additional provisions to the minimum requirements established by subrule 50.26(2), relating to the issuance of evidences of debt registered by qualification under section 207 of the Act.

**50.26(4)** The provisions of 50.26(2) and 50.26(3) shall not apply to evidences of debt meeting either of the following criteria:

a. The debt matures on or before one year from date of issuance; or

b. The aggregate amount of the offering of the evidences of debt does not exceed \$500,000.

#### **191—50.27(502) Delivery of prospectus.**

**50.27(1)** As a condition to registration by coordination, the final prospectus or offering circular required by subsection (2) of section 206 of the Act shall be delivered to each person to whom an offer is made before or concurrently with the first written offer made to an offeree otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken as a participant in the distribution; the confirmation of any sale made by or for the account of any such person; payment pursuant to any such sale; or delivery of the security pursuant to any such sale, whichever first occurs.

**50.27(2)** As a condition to registration by qualification, a prospectus meeting the provisions of 50.27(3) shall be delivered in the same manner as prescribed in 50.27(1).

**50.27(3)** Every prospectus required to be delivered by 50.27(2) shall be in a form acceptable to the administrator and shall contain the information specified in paragraphs (a) through (k) and paragraph (p) of subsection 2 of section 207 of the Act and any other information which the administrator may deem necessary and appropriate.

**191—50.28(502) Amendments to registration.** For the purposes of section 208(9)b(1) of the Act, in every registration statement which is registered by qualification the issuer shall be presumed not to have kept “reasonably current the information contained therein” unless:

1. The issuer notifies the administrator, in writing, of any change in a material fact contained in the information filed with the registration statement within seven days after the issuer learns of the change; and

2. The issuer notifies the administrator, in writing, of the results of an annual audit or semiannual report within 14 days after receipt by the issuer of such audit report or semiannual report unless such audit or report would constitute a change in a material fact under paragraph (1), in which case such audit or report must be filed within 7 days.

**191—50.29(502) Filing in coordination.** Every applicant for registration by coordination shall file, in addition to all other documents required by the Act or rules, the following documents:

1. In the case of a corporation, a copy of its articles of incorporation and bylaws;
2. In the case of a partnership, a copy of its partnership articles;
3. A copy of any agreements between the issuer and underwriters and among underwriters;
4. A copy of any indenture or other instrument governing the issuance of the security to be registered;
5. A specimen or copy of the security.

**191—50.30(502) Reports for qualification.** No registration by qualification shall be permitted to become effective if the administrator requests, and unless the issuer or applicant files, any and all of the following documents which are applicable to the registration:

1. The report of any appraiser or engineer when the value of certain property does or will, after its purchase, constitute a significant portion of the assets of the issuer or any other person whose financial condition is significant to the registration;
2. A signed opinion of counsel regarding the ownership of any property when such ownership is deemed significant to the registration.

**191—50.31(502) Impound of proceeds.** Rescinded IAB 2/11/98, effective 3/18/98.

**191—50.32(502) Purchase to complete impound.** Rescinded IAB 2/11/98, effective 3/18/98.

**191—50.33(502) Limited registration of Canadian broker-dealers and agents.**

**50.33(1)** A Canadian broker-dealer that is resident in Canada and has no office or other physical presence in Iowa may, provided the broker-dealer is registered in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

*a.* A person from Canada who is temporarily resident in Iowa, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

*b.* A person from Canada who is resident in Iowa, whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

**50.33(2)** An agent who will be representing a Canadian broker-dealer registered under this rule may, provided the agent is registered in accordance with this rule, effect transactions in securities in Iowa as permitted for the broker-dealer in 50.33(1).

**50.33(3)** A Canadian broker-dealer may register under this rule provided that the broker-dealer:

*a.* Files an application in the form required by the jurisdiction in which it has its head office;

*b.* Files a consent to service of process;

*c.* Is registered as a broker or dealer in good standing in the jurisdiction from which the broker-dealer is effecting transactions into this state and files evidence thereof; and

*d.* Is a member of a self-regulatory organization or stock exchange in Canada.

**50.33(4)** An agent who will be representing a Canadian broker-dealer registered under this rule in effecting transactions in securities in Iowa may register under this rule provided that the agent:

*a.* Files an application in the form required by the jurisdiction in which the broker-dealer has its head office;

*b.* Files a consent to service of process; and

*c.* Is registered in good standing in the jurisdiction from which the agent is effecting transactions into Iowa and files evidence thereof.

**50.33(5)** If no denial order is in effect and no proceeding is pending under Iowa Code section 502.304, registration becomes effective on the sixtieth day after an application is filed, unless earlier made effective.

**50.33(6)** A Canadian broker-dealer registered under this rule shall:

*a.* Maintain provincial or territorial registration and membership in a self-regulatory organization or stock exchange in good standing;

*b.* Provide the administrator upon request with the books and records relating to its business in Iowa as a broker-dealer;

*c.* Inform the administrator forthwith of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and

*d.* Disclose to the broker-dealer's clients in Iowa that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

**50.33(7)** An agent of a Canadian broker-dealer registered under this rule shall:

*a.* Maintain the agent's provincial or territorial registration in good standing;

*b.* Inform the administrator forthwith of any criminal action, taken against the agent, or of any finding or sanction imposed on the agent as a result of any self-regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

**50.33(8)** Renewal applications for Canadian broker-dealers and agents under this rule must be filed before December 1 each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to 50.33(3) “a” or 50.33(4) “a,” as the case may be.

**50.33(9)** Every applicant for registration or renewal registration under this rule shall pay the fee for broker-dealers and agents as required under the Act.

**50.33(10)** A Canadian broker-dealer or agent registered under this rule may only effect transactions in Iowa:

- a. As permitted in 50.33(1) or 50.33(2);
- b. With or through (1) the issuers of the securities involved in the transactions, (2) other broker-dealers, and (3) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; and
- c. As otherwise permitted by this rule.

**50.33(11)** A Canadian broker-dealer or agent registered under this rule and acting in accordance with the limitations set out in 50.33(10) is exempt from all of the requirements of the Act, except the antifraud provisions and the requirements set out in this rule.

**50.33(12)** All transactions in securities effected between Canadian broker-dealers or agents registered under this rule and Canadian persons who meet the requirements in 50.33(1) “a” or “b” are exempt from Iowa Code sections 502.201 and 502.602.

**191—50.34(502) Agent exclusion.**

**50.34(1)** Individuals offering securities for issuers pursuant to dividend reinvestment or stock purchase plans whose securities are federal covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933 as amended in Pub. L. No. 104-290, are excluded from the definition of agent, provided that the individuals do not directly or indirectly receive a commission for soliciting any person in this state.

**50.34(2)** The administrator may deny or revoke this exclusion by order for a specific issue of securities, or for a category of securities when necessary in the public interest and for the protection of investors.

**191—50.35(502) Internet advertising by broker-dealers, investment advisers, broker-dealer agents, and investment adviser representatives.**

**50.35(1)** Broker-dealers, investment advisers, broker-dealer agents, and investment adviser representatives who use the Internet, the worldwide web, and similar proprietary or common carrier electronic systems (“Internet”) to disseminate information on available products and services, through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on bulletin boards, displays on home pages or similar methods (“Internet communication”), shall not be deemed to be transacting business in this state for purposes of Iowa Code section 502.301, based solely on that communication, if the following conditions are observed:

- a. The Internet communication contains a legend which clearly states that:
  - (1) The broker-dealer, investment adviser, broker-dealer agent or investment adviser representative may only transact business in this state if first registered or excluded or exempted from state broker-dealer, investment adviser, broker-dealer agent or investment adviser representative registration requirements; and

(2) The broker-dealer, investment adviser, broker-dealer agent or investment adviser representative will not effect or attempt to effect transactions in securities, or render personalized investment advice for compensation, as may be, absent compliance with state broker-dealer, investment adviser, broker-dealer agent or investment adviser representative registration requirements, or an applicable exemption or exclusion;

*b.* The Internet communication contains a mechanism including, without limitation, technical “firewalls” or other policies and procedures to ensure that, prior to effecting or attempting to effect transactions with customers in this state, or prior to direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, broker-dealer agent or investment adviser representative is first registered in this state or qualifies for an exemption or exclusion from the registration requirements. Nothing in this paragraph shall be construed to relieve a state-registered broker-dealer, investment adviser, broker-dealer agent or investment adviser representative from complying with any applicable securities registration requirement in this state;

*c.* The broker-dealer, investment adviser, broker-dealer agent or investment adviser representative does not, through the Internet communication, effect or attempt to effect transactions in securities in this state, or render personalized investment advice for compensation, as may be, but limits the Internet communication to general information on products and services; and

*d.* In the case of a broker-dealer agent or investment adviser representative:

(1) The agent’s broker-dealer or investment adviser affiliation is prominently disclosed within the Internet communication;

(2) The broker-dealer or investment adviser with whom the agent or representative is affiliated retains responsibility for reviewing and approving the content of any Internet communication by the broker-dealer agent or investment adviser representative;

(3) The broker-dealer or investment adviser with whom the agent or representative is associated first authorizes the dissemination through the Internet communication of information on the particular products and services; and

(4) In disseminating information through the Internet communication, the broker-dealer agent or investment adviser representative acts within the scope of the authority granted by the broker-dealer or investment adviser.

**50.35(2)** Nothing in this rule shall excuse broker-dealer, investment adviser, broker-dealer agent, and investment adviser representative compliance with applicable securities registration, antifraud or related provisions.

**50.35(3)** Nothing in this rule shall be construed to affect the activities of any broker-dealer, investment adviser, broker-dealer agent or investment adviser representative engaged in business in this state that is not subject to the jurisdiction of the administrator as a result of the National Securities Markets Improvements Act of 1996.

This rule is intended to implement Iowa Code section 502.301.

**191—50.36(502) Selling expenses.** Rescinded IAB 2/11/98, effective 3/18/98.